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**BEFORE THE
PHYSICIAN ASSISTANT COMMITTEE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1E-2009-197212

KENNETH R. TAYLOR
17352 Napa Street
Northridge, California 91325

ACCUSATION

Physician Assistant License No. PA 15549

Respondent.

Complainant alleges:

PARTIES

1. Elberta Portman (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Physician Assistant Committee, Department of Consumer Affairs.

2. On or about November 22, 2000, the Physician Assistant Committee issued Physician Assistant License Number PA 15549 to Kenneth R. Taylor (Respondent). The Physician Assistant License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Physician Assistant Committee (Committee) under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 3527 of the Code provides that the Committee may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a physician's assistant certificate for unprofessional conduct.

5. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

6. Section 3528 of the Code states any proceedings involving the denial, suspension or revocation of the application for licensure or the license of a physician assistant, the application for approval or the approval of a supervising physician, or the application for approval or the approval of an approved program under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

7. Section 3531 of the Code states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any offense which is substantially related to the qualifications, functions, or duties of the business or profession to which the license was issued is deemed to be a conviction within the meaning of this chapter. The committee may order the license suspended or revoked, or shall decline to issue a license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter

1 a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information
2 or indictment."

3 8. California Code of Regulations, title 16, section 1399.525, states:

4 "For the purposes of the denial, suspension or revocation of a license or approval pursuant
5 to division 1.5 (commencing with section 475) of the code, a crime or act shall be considered to
6 be substantially related to the qualifications, functions or duties of a person holding a license or
7 approval under the Physician Assistant Practice Act if to a substantial degree it evidences present
8 or potential unfitness of a person holding such a license or approval to perform the functions
9 authorized by the license or approval in a manner consistent with the public health, safety or
10 welfare. Such crimes or acts shall include, but are not limited to, the following:

11 "(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
12 violation of, or conspiring to violate any provision or term of the Medical Practice Act.

13 "(b) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
14 violation of, or conspiring to violate any provision or term of the Physician Assistant Practice
15 Act.

16 "....

17 "(h) Conviction of a crime involving fiscal dishonesty.

18 "...."

19 9. Section 2234 of the Code states in pertinent part: "The Division of Medical Quality
20 shall take action against any licensee who is charged with unprofessional conduct. In addition to
21 other provisions of this article, unprofessional conduct includes, but is not limited to, the
22 following:

23 "....

24 "(e) The commission of any act involving dishonesty or corruption which is substantially
25 related to the qualifications, functions, or duties of a physician and surgeon."

26 10. Section 490 of the Code states:

27 "(a) In addition to any other action that a board is permitted to take against a licensee, a
28 board may suspend or revoke a license on the ground that the licensee has been convicted of a

1 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
2 or profession for which the license was issued.

3 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
4 discipline a licensee for conviction of a crime that is independent of the authority granted under
5 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
6 of the business or profession for which the licensee's license was issued.

7 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
8 conviction following a plea of nolo contendere. Any action that a board is permitted to take
9 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
10 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
11 made suspending the imposition of sentence, irrespective of a subsequent order under the
12 provisions of Section 1203.4 of the Penal Code.

13 "(d) The Legislature hereby finds and declares that the application of this section has been
14 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
15 554, and that the holding in that case has placed a significant number of statutes and regulations
16 in question, resulting in potential harm to the consumers of California from licensees who have
17 been convicted of crimes. Therefore, the Legislature finds and declares that this section
18 establishes an independent basis for a board to impose discipline upon a licensee, and that the
19 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
20 constitute a change to, but rather are declaratory of, existing law."

21 11. Section 493 of the Code states:

22 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
23 the department pursuant to law to deny an application for a license or to suspend or revoke a
24 license or otherwise take disciplinary action against a person who holds a license, upon the
25 ground that the applicant or the licensee has been convicted of a crime substantially related to the
26 qualifications, functions, and duties of the licensee in question, the record of conviction of the
27 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
28 and the board may inquire into the circumstances surrounding the commission of the crime in

1 order to fix the degree of discipline or to determine if the conviction is substantially related to the
2 qualifications, functions, and duties of the licensee in question.

3 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
4 'registration.'"

5 12. Section 810 of the Code states:

6 "(a) It shall constitute unprofessional conduct and grounds for disciplinary action,
7 including suspension or revocation of a license or certificate, for a health care professional to do
8 any of the following in connection with his or her professional activities:

9 "(1) Knowingly present or cause to be presented any false or fraudulent claim for the
10 payment of a loss under a contract of insurance.

11 "(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the
12 same, or to allow it to be presented or used in support of any false or fraudulent claim.

13 13. Title 18, United States Code, Section 1347, states, in pertinent part:

14 "Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice (1)
15 to defraud any health care benefit program; or (2) to obtain, by means of false or fraudulent
16 pretenses, representations, or promises, any of the money or property owned by, or under the
17 custody or control of, any health care benefit program, in connection with the delivery of or
18 payment for health care benefits, items, or services, shall be fined under this title or imprisoned
19 not more than 10 years, or both...."

20 14. Title 18, United States Code, Section 1003, states:

21 "Whoever knowingly and fraudulently demands or endeavors to obtain any share or sum in
22 the public stocks of the United States, or to have any part thereof transferred, assigned, sold, or
23 conveyed, or to have any annuity, dividend, pension, wages, gratuity, or other debt due from the
24 United States, or any part thereof, received, or paid by virtue of any false, forged, or counterfeited
25 power of attorney, authority, or instrument, shall be fined under this title or imprisoned not more
26 than five years, or both; but if the sum or value so obtained or attempted to be obtained does not
27 exceed \$1,000, he shall be fined under this title or imprisoned not more than one year, or both."

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(CONVICTION)**

3 15. Respondent is subject to disciplinary action under sections 3531 and 490 and Title 16
4 California Code of Regulations, section 1399.525 in that Respondent was convicted of aiding and
5 abetting a false demand for payment against the Unites States in connection with Medi-Cal
6 payments. The circumstances are as follows:

7 16. On or about April 3, 2003, Respondent was a licensed physician's assistant working
8 at various medical clinics throughout Los Angeles, California.

9 17. The medical clinics at which Respondent worked served a population of patients that
10 included patients who possessed Medi-Cal¹ benefits cards issued by the State of California.

11 18. On or about April 3, 2003, Respondent wrote a prescription for Serostim² for a patient
12 he knew was not taking this medication. This patient paid Respondent \$500.00 for the
13 prescription. After accepting the money, Respondent told this patient the price he would charge
14 to write Serostim prescriptions in the future would be going up to \$600.00. As a result of the
15 fraudulent prescription, Respondent aided and abetted a knowing a fraudulent demand upon the
16 United States and received a payment for his actions.

17 19. On May 22, 2003, the Federal Grand Jury for the Eastern District of California
18 indicted Respondent for Health Care Fraud in violation of Title 18, United States Code, Section
19 1347 in indictment 03-0240 for the activities alleged above in paragraphs 16 through 18.

20 ¹ The Medi-Cal Provider program is a federal and state funded program that provides for
21 basic medical services for qualified, needy, and indigent individual. To utilize the Medi-Cal
22 benefits, an eligible patient goes to a Medi-Cal participating provider for medical services. If the
23 Medi-Cal eligible patient needs medication, the patient receives prescriptions for medication
24 written by a licensed medical practitioner. The Medi-Cal participating provider is reimbursed for
25 the medications by using the Medi-Cal billing system. That system requires the use of a provider
26 number issued to the provider when the provider signs an agreement with the State of California
27 to receive a provider number. The provider number is then used to bill the program for patient
28 prescriptions. Medi-Cal only pays for the prescribed medications if the medications are used by
the eligible patient.

² Serostim is a human growth hormone and the only therapy for HIV-wasting FDA-
approved to increase weight and lean body mass and improve physical endurance. It is indicated
for the treatment of HIV wasting in patients receiving antiretroviral therapy. Serostim costs
between \$7,000 and \$8,000 per month per recipient. Athletes, bodybuilders, and aging adults
commonly abuse it for its ability to increase muscle mass and decrease body fat, as well as its
purported potential to improve athletic performance and reverse the effects of aging.

1 20. On September 9, 2008, Respondent pled guilty to and was convicted of a violation of
2 Title 18, United States Code, Section 1003 based on the circumstances set forth in paragraphs 16
3 through 20.

4 21. On January 6, 2009, Respondent was sentenced to 36 months probation, restitution in
5 the amount of \$200,000.00 and certain other terms and conditions of probation.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(DISHONEST ACTS)**

8 22. Respondent is subject to disciplinary action under section 2234, subdivision (e), in
9 that he committed dishonest acts. The circumstances are as follows:

10 23. The facts and circumstances set forth in paragraphs 16 through 20 above are
11 incorporated here by reference as if fully set forth.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(PREPARATION OF FALSE WRITING)**

14 24. Respondent is subject to disciplinary action under section 810, subdivision (a)(2) of
15 the Code in that he did knowingly prepare and subscribe a writing with intent to aid and abet it to
16 be presented in support of a false and fraudulent claim.

17 25. The facts and circumstances set forth in paragraphs 16 through 20 above are
18 incorporated here by reference as if fully set forth.

19 **PRAYER**

20 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
21 and that following the hearing, the Physician Assistant Committee issue a decision:

22 1. Revoking or suspending Physician Assistant License Number PA 15549, issued to
23 Kenneth R. Taylor;

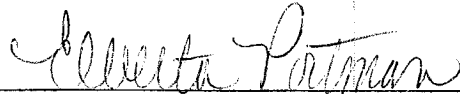
24 2. Ordering him to pay the Physician Assistant Committee the reasonable costs of the
25 investigation and enforcement of this case, pursuant to Business and Professions Code section
26 125.3;

27 3. Ordering him, if placed on probation, to pay the Committee the costs of probation
28 monitoring;

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4. Taking such other and further action as deemed necessary and proper.

DATED: February 2, 2011



ELBERTA PORTMAN
Executive Officer
Physician Assistant Committee
Department of Consumer Affairs
State of California
Complainant

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